

No. 87-1104

Supreme Court, U.S.

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In The

Supreme Court of the United States
October Term, 1987

WALTER ZANT, WARDEN,

Petitioner,

v.

WILLIAM NEAL MOORE,

Respondent.

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

REPLY BRIEF ON BEHALF OF THE PETITIONER

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ARGUMENT AND CITATION OF AUTHORITY

**THE PARTIES AGREE THAT GUIDANCE IS
NEEDED FROM THIS COURT AS TO HOW
CONGRESSIONALLY ENACTED RULE 9(b)
SHOULD BE INTERPRETED AND APPLIED.**

Due to Respondent's concession that the Eleventh Circuit "seriously erred" in its interpretation of Rule 9(b) of the Rules Governing Section 2254 Cases (Resp. Br. 32), Respondent has effectively admitted that the time is ripe

for guidance from this Court as to the interpretation and application of the term "abuse of the writ" as contained in Rule 9(b). Due to the current lack of clear judicial guidance, each federal district court and each petitioner and respondent involved in successive applications for federal habeas corpus relief struggle to interpret what constitutes an abuse of the writ.

The absence of federal judicial guidance available to federal district courts reviewing successive applications is exemplified by Respondent's brief which relies selectively and almost exclusively on Committee Notes interpreting 28 U.S.C. § 2244 and 2244(b) and hearings before the House subcommittee dealing with the interpretation of Rule 9(b). Contrary to Respondent's position, Petitioner is not seeking to usurp congressional authority with reference to the jurisdiction of federal courts to review successive applications, but rather simply requests that this Court recognize and rectify the dearth of judicial authority available for federal district courts to determine when and how they should exercise their discretion to review successive applications on their merits.

Rule 9(b), like all statutes, requires a continuing interpretative process by the courts so that the statute may be applied to specific fact situations and individual cases. *See Barefoot v. Estelle*, 464 U.S. 880 (1983) and *Kuhlmann v. Wilson*, 477 U.S. 436 (1986). Petitioner simply requests that this Court build on the congressionally laid foundation of Rule 9(b) in order to guide the discretion of federal district courts attempting to deal with the ever

increasing problem of abuse of the writ, especially in the context of capital litigation.

Respectfully submitted,

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